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In the Supreme Court of the United States

OCTOBER TERM, 1950 51

THOMAS P. McMAHON, PETITIONER

v.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Argument	6
Conclusion	17
Appendix	18

CITATIONS

Cases:

Brehm v. *Mayor etc. of New York*, 104 N. Y. 186	14
Cosmopolitan Co. v. *McAllister*, 337 U. S. 783	11
Dickinson v. *Mayor*, 92 N. Y. 584	13
Dillon v. *Board of Pension Commissioners*, 18 Cal. 427	14
Fox v. *Alcoa S. S. Co.*, 143 F. 2d 667	15
Fuller v. *State Highway Commissioner*, 140 Kan. 558	12
Gregory v. *United States*, 187 F. 2d 101	14, 15
Hust v. *Moore-McCormick Lines*, 328 U. S. 707	3
MacInnes v. *United States*, 93 F. Supp. 987	14
Piascik v. *United States*, 65 F. Supp. 430	7
Reading Co. v. *Koons*, 271 U. S. 58	7, 14
Rodinciuc v. *United States*, 175 2d 479, certiorari denied, 338 U. S. 895	15, 16, 17
Shea v. *State Tax Comm.*, 101 Utah 209	14
Sloand v. *United States*, 93 F. Supp. 83	14
Snyder v. *Buck*, 340 U. S. 15	5
Thurston v. *United States*, 179 F. 2d 514	6, 9, 10, 14, 15, 17
United States v. *Memphis Cotton Oil Co.*, 288 U. S. 62	7, 11, 12
United States v. *Michel*, 282 U. S. 656	9
United States v. *Sherwood*, 312 U. S. 584	9
United States v. *Sligh*, 24 F. 2d 636, vacated 277 U. S. 582	12
Wilson v. *United States*, 70 F. 2d 176	12
Wilson v. *Weber County*, 100 Utah 141	12, 14
Young v. *City of Seattle*, 30 Wash 2d 357	14

Statutes:

Act of May 29, 1928, 45 Stat. 964, 38 U.S.C. 445, par. 2	14
Act of July 8, 1946 (60 Stat. 481, 501)	5
Federal Employers' Liability Act (35 Stat. 65, as amended, 45 U.S.C. 51 ff)	7

Statutes—Continued

	Page
Jones Act (Act of June 5, 1920, Sec. 33, 41 Stat. 1007, 46 U.S.C. 688)	7
Suits in Admiralty Act (41 Stat. 525, as amended, 46 U.S.C. 741-752)	7
Section 5	20
28 U.S.C. 1292(3)	6
28 U.S.C. 2401(b)	14
United States Employees' Compensation Act	18
War Shipping Administration (Clarification) Act of March 24, 1943 (57 Stat. 45, 50 U.S.C. App. 1291)	3, 18
Miscellaneous:	
5 C.F.R. § 6.124(a)	3
Executive Order 9054, 7 F.R. 837	3
F.R.C.P., Rule 25(d)	5
General Order 32 of the Administrator, War Shipping Administration, 8 F.R. 5414 (46 CFR §§ 304.20-304.29)	4, 20
Sec. 304.20	20
Sec. 304.21	21
Sec. 304.22	22
Sec. 304.23	22
Sec. 304.24	4, 16, 22
Sec. 304.25	4, 23
Sec. 304.26	4, 23
Sec. 304.27	17, 24
H. Rep. No. 107, 78th Cong., 1st sess., p. 21	4, 11, 13
H. Rep. No. 2572, 77th Cong., 2d sess., p. 14	11, 13
Reorganization Plan No. 21 of 1950, Sec. 306 (15 F.R. 3178, 3180, 46 U.S.C.A. 1111 Note)	5
S. Rep. 62, 78th Cong., 1st sess., pp. 11-14	4, 11, 13
S. Rep. 1813, 77th Cong., 2d sess., p. 6	11

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 606

THOMAS P. McMAHON, PETITIONER

v.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania (R. 17) is reported at 91 F. Supp. 593. The opinion of the United States Court of Appeals for the Third Circuit is reported at 186 F. 2d 227.

JURISDICTION

The judgment of the Court of Appeals was entered on December 28, 1950. The petition for a

writ of certiorari was filed on March 13, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, in an action brought against the United States under the Suits in Admiralty Act (41 Stat. 525, 46 U. S. C. 741 *et seq.*), pursuant to Section 1(a) of the Clarification Act of March 24, 1943, (57 Stat. 45, 50 U. S. C. App. 1291(a)), the statute of limitations begins to run at the time of injury to the seaman or upon the administrative disallowance of the claim.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the War Shipping Administration (Clarification) Act of March 24, 1943 (57 Stat. 45, 50 U. S. C. App. 1291(a)), of the Suits in Admiralty Act (41 Stat. 525, as amended, 46 U. S. C. 741-752), and of General Order 32 of the Administrator, War Shipping Administration (8 F. R. 5414, 46 CFR § 304.20-304.29), are set forth in the Appendix, *infra*, pp. 18-24.

STATEMENT

1. *Introductory statement.* This is a suit in admiralty brought by a merchant seaman against the United States and the Maritime Commission under the War Shipping Administration (Clarification) Act (57 Stat. 45, 50 U. S. C. App. 1291) and the Suits in Admiralty Act (41 Stat. 525, as amended, 46 U. S. C. 741-752).

In November 1945 and for several months thereafter, petitioner was employed on the *S. S. John Sherman*, then operated by the War Shipping Administration. At that time, virtually the entire American shipping industry constituted a single vast war shipping pool owned by the United States and operated by the War Shipping Administration (cf. *Hust* v. *Moore-McCormick Lines*, 328 U. S. 707, 709-710). Consequently, merchant seamen were technically unclassified civil service employees of the United States (cf. 5 CFR § 6.124(a) and Executive Order 9054, 7 F. R. 837) and as such to be covered by the United States Employees' Compensation Act and the Civil Service Retirement laws, rather than by the Jones Act and the Social Security System.

In order to obviate possible confusion and hardship as a result of the temporary change of status of merchant seamen from private employees to civil servants, Congress enacted the Clarification Act of March 24, 1943 (57 Stat. 45, 50 U. S. C. App. 1291, *infra*, pp. 18-20). The basic purpose of the statute has been epitomized in the Congressional Committee reports:

> The effect of section 1 is to provide that officers and crew members who are employed on behalf of the United States through the War Shipping Administration shall be put on the same basis as seamen in private employment with respect to rights, benefits, and privileges in connection with employment, particularly

in case of death, injury or other casualty. [H. Rep. 107, 78th Cong., 1st sess., p. 2; S. Rep. 62, 78th Cong., 1st sess., p. 11].

While the substantive rights of War Shipping Administration merchant seamen were completely assimilated to merchant seamen in private employ, the Clarification Act provided for two procedural particularities. Actions against the Government were to be governed by the Suits in Admiralty Act, rather than by the Jones Act, and, in order to avoid unnecessary and premature litigation which might adversely affect questions of security, it was provided that no judicial proceedings could be brought by the WSA seaman unless he had first submitted his claim for administrative determination and it had been administratively disallowed.

Pursuant to the direction contained in the Clarification Act, the Administrator, War Shipping Administration, issued his General Order 32 (8 F.R. 5414, 46 CFR §§ 304.20-304.29, *infra*, pp. 20-24), setting forth the details of the procedure governing the filing of such seamen's claims. General Order 32, established, among others, the minimum information to be embodied in the filed claims (§ 304.24, *infra*, p. 22), it provided that claims for personal injuries were to be filed with the ship's general agent (§ 304.25, *infra*, p. 23) and they were presumed to have been disallowed if not acted upon within 60 days after the filing (§ 304.26, *infra*, p. 23).

2. *The proceedings below.* On January 22, 1948, petitioner filed a libel in admiralty (R. 3-9) against the United States of America and the Maritime Commission [1] alleging that in November 1945, during his employment on the *S. S. John Sherman,* he contracted a skin condition and that in December 1945, while on shore leave in France, he was assaulted, suffering injuries to his nose and shoulders. He asked for $15,000 damages and maintenance and care.

Respondents moved to dismiss the libel on three grounds (R. 11-13): (a) that the cause of action had arisen more than two years before the libel was brought (Suits in Admiralty Act, Sec. 5; 46 U. S. C. 745, *infra,* p. 20); (b) that the libel failed to allege that petitioner had submitted his claim for administrative determination and that his claim had been disallowed; (c) that the suit against the Maritime Commission constituted an unauthorized suit against the United States.[2] Apparently, in response to the second branch of this motion, petitioner filed a letter, dated April 17, 1946, which he had received from the ship's general agent (R. 14-16). At best, this letter indicates that the gen-

[1] The functions of the War Shipping Administration were transferred to the Maritime Commission as of September 1, 1946, by the Act of July 8, 1946 (60 Stat. 481, 501).

[2] The Maritime Commission was abolished by Reorganization Plan No. 21 of 1950, Sec. 306 (15 F. R. 3178, 3180; 46 U.S.C.A. 1111 Note) effective May 24, 1950. No successor was substituted for that agency within the six months period provided for in Rule 25(d) F.R.C.P.; hence, the action has abated as against the Maritime Commission (*Snyder* v. *Buck*, 340 U. S. 15), if it ever could be brought against it.

eral agent preliminarily rejected petitioner's claim for his nose injury pending the receipt of additional data which he had requested. The record does not contain any indication to the effect that the claims for petitioner's alleged skin and shoulder conditions were ever filed and rejected administratively.

The decision of the district court (R. 17-21) dealt only with the issue of limitations and dismissed the complaint because it had been brought more than two years after plaintiff had suffered his alleged injuries[3] (R. 22).

Petitioner appealed to the United States Court of Appeals for the Third Circuit,[4] which affirmed the order of the district court. (186 F. 2d 227).

ARGUMENT

Petitioner asks review of the ruling below on the ground that it conflicts with *Thurston* v. *United States,* 179 F. 2d 514 (C. A. 9), and presents a question of general importance which this Court should decide. We submit that the decision below is clearly correct under this Court's decisions and that the conflict with *Thurston* v. *United States, supra,* is without significance in view of the fact that the question lacks continuing importance.

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[3] The motion to dismiss was denied with respect to items not significant here, viz., maintenance and care subsequent to January 22, 1946, and damages for failure to provide maintenance and care after January 22, 1946.

[4] The order of the district court was appealable although it disposed of less than the entire libel (28 U. S. C. 1292(3)).

1. The narrow question involved in this petition is whether the two year statute of limitations of the Suits in Admiralty Act began to run when petitioner allegedly suffered his injuries in November and December 1945, or sixty days after the filing of petitioner's administrative claim, a procedural act the time for which was left by the statute completely within petitioner's control. This problem has been settled by this Court for more than a quarter of a century adversely to the position taken by the petitioner.

In *Reading Co.* v. *Koons*, 271 U. S. 58, this Court was confronted with the analogous question whether in an action for wrongful death brought under the Federal Employers' Liability Act (35 Stat. 65, as amended, 45 U. S. C. 51 ff) [5] the statute of limitations begins to run at the time of the fatal accident or upon the appointment of the administrator. This Court refused to be drawn into general discussions of the nature of a cause of action [6] and the time of its accrual (at 61-62) but held that the question before it must be deter-

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[5] Decisions rendered under the Federal Employers' Liability Act are directly apposite to this case. The Clarification Act gives seamen the substantive rights granted by the Suits in Admiralty Act. (Act of March 9, 1920 c. 95, 41 Stat. 525, 46 U. S. C. 741 ff). The rights under the latter are those the seaman would have under the Jones Act (Act of June 5, 1920, Sec. 33, 41 Stat. 1007, 46 U. S. C. 688), which in turn refers expressly to the Federal Employers' Liability Act. Cf. *Piascik* v. *United States*, 65 F. Supp. 430 (S.D.N.Y.).

[6] Cf. the warning issued by this Court in *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 67-68: "The analogy [to the concept 'cause of action'] is helpful, yet it will confuse, instead of helping, if we do not insist at the beginning

mined "in the light of the general purposes of the statute * * * and with due regard to those practical ends which are to be served by any limitation of the time within which an action must be brought." The Court then pointed out that it is the very purpose of a statute of limitations that there should be an end to litigation "at some definitely ascertainable period." This purpose would be completely frustrated if the statute were construed in a way that the plaintiff could delay the accrual of the "cause of action" by failing to perform an act over which he has complete and exclusive control. [Application for the appointment of an administrator in the *Koons* situation, filing of the administrative claim in the instant case.] If this were the law, the period of limitations "might as well have been omitted from the statute" (p. 65).

The considerations, which lead this Court to hold that the statutory period under Federal Employers' Liability Act begins to run upon the happening of the accident and not upon the performance by the plaintiff of a procedural prerequisite, apply with even greater force to cases arising under the

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upon a definition of our terms or at least a recognition of their shifting meanings. A 'cause of action' may mean one thing for one purpose and something different for another. It may mean one thing when the question is whether it is good upon demurrer, and something different when there is a question of the amendment of a pleading or of the application of the principle of *res judicata*. * * * This court has not committed itself to the view that the phrase is susceptible of any single definition that will be independent of the context or of the relation to be governed."

Clarification Act. The latter present evidentiary problems even more serious than the cases involving the Federal Employers' Liability Act where the accident is near at hand and the defendant usually knows of it, is able to investigate it, to preserve the evidence, and to keep track of the witnesses. Admiralty claims, on the other hand, arise in the four corners of the world with the ensuing dissipation of evidence. Moreover, they are not confined to those arising on board ship as illustrated by petitioner's count based on an alleged assault in a French port. Finally, the Clarification Act constitutes a waiver of the Government's sovereign immunity; hence, a construction which nullifies its limitations provisions is not to be favored. *United States* v. *Michel*, 282 U. S. 656, 659; *United States* v. *Sherwood*, 312 U. S. 584, 590.

The court below was correctly applying the controlling decisions of this Court when it refused to interpret the Clarification Act in a way in which petitioner "merely by deferring the filing of his administrative claim could retain his right to bring suit against the United States for as many years as he thought advantageous to himself" (186 F. 2d 227, 230).

2. The petitioner relies upon the decision of the United States Court of Appeals for the Ninth Circuit in *Thurston* v. *United States* (179 F. 2d 514), which construed the Clarification Act to the effect that the statute of limitations begins to run

only upon the rejection of the administrative claim, and upon a number of unrelated cases generally discussing the time of the accrual of a cause of action (Pet. 13-16). We believe that the *Thurston* decision was clearly wrong, and that in any event the problem as to the rights of seamen during the period of government operation is a temporary one no longer of sufficient importance to warrant review.

The decision in the *Thurston* case was based on three considerations:

First, it held that the Clarification Act being an instance of "social legislation" must be construed in favor of the seaman in every respect, including the issue of limitations. This reasoning fails to realize the distinction between the preferential substantive rights of merchant seamen as wards of the courts, which are entitled to a liberal construction, and the procedural provisions prescribed by Congress, which must be construed strictly and reasonably, even where merchant seamen are involved, since they involve a waiver of sovereign immunity.[7] This dichotomy between the substantive rights of merchant seamen, which were carefully preserved by the Clarification Act, and the procedural provisions, which were to be adapted to the circumstance that the sovereign is the defendant, was well recognized by the Congress and was stressed in the pertinent Committee Reports. See

[7] See *supra*, p. 9.

e.g. H. Rep. No. 107, 78th Congress, 1st session on p. 21:

> The various rights and remedies under statute and general maritime law with respect to death, injury, illness, and other casualty to seamen, have been rather fully set forth hereinabove. Under clause 2 of section 1(a) these *substantive rights* would be governed by existing law relating to privately employed seamen. The only modification thereof arises from the *remedial provision* that they shall be enforced in accordance with the provisions of the Suits in Admiralty Act. *This procedure is appropriate in view of the fact that the suits will be against the Government of the United States.*[8] [Italics supplied.]

Second, in trying to determine the time when the seaman's claim accrued, the Ninth Circuit fell back upon the concept "cause of action" as it is used for the purposes of pleading. In so doing, it failed to follow the rationale of this Court in the *Koons* case, that the accrual of a cause of action could not be determined abstractly, but rather that the time of the accrual must be derived from the general purposes of the statute involved and of its limitation provisions. The *Thurston* case constitutes a typical example of the difficulties which necessarily ensue when a court disregards the admonition of Mr. Justice Cardozo in *United States* v.

[8] To the same effect. H. Rep. No. 2572, 77th Cong., 2nd sess., p. 14; See S. Rep. 62, 78th Cong., 1st sess., p. 11; S. Rep. 1813, 77th Cong., 2d sess., p. 6. See *Cosmopolitan Co.* v. *McAllister*, 337 U. S. 783, 792.

Memphis Cotton Oil Co., supra, p. 7, fn. 6, and seeks to solve a problem on the basis of a definition of the term "cause of action" without making proper allowance for its shifting meanings.[9]

Third, the Ninth Circuit erroneously inferred from the absence of a time limit in which the administrative claim must be filed, that it could be submitted at any time—even several years later—because "an apparently slight injury may not develop into a serious disqualification in the seaman's service till many months after he is hurt" (at 516). This line of reasoning completely misinterprets the purpose of Congress in requiring the submission of an administrative claim; it also runs counter to the well-established body of law interpreting the many statutes requiring notice to the sovereign or one of its subdivisions before suit may be brought.

The reason why Congress required the submission of an administrative claim appears clearly from the Committee Reports, which state unambiguously:

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[9] Other courts have avoided this pitfall by the common sense holding that for the purposes of limitations the concept "cause of action" does not include those purely procedural steps which the plaintiff must take in order to gain access to the courts, but which do not affect the substantive liability of the prospective defendant. See *e.g., Fuller* v. *State Highway Commissioner,* 140 Kan. 558; *Wilson* v. *Weber County,* 100 Utah 141. The federal courts reached similar results under the War Risk Insurance legislation. *United States* v. *Sligh,* 24 F. 2d 636, 638 (C.A. 9), vacated after amendment of the statute, 277 U. S. 582; *Wilson* v. *United States,* 70 F. 2d 176, 179 (C.A. 10).

> To prevent unnecessary or premature litigation against the United States, it is required that before suit there shall be an administrative disallowance of the same in accord with rules or regulations to be prescribed by the Administrator, War Shipping Administration. [H. Rep. 2572, 77th Cong., 2d sess., p. 14; H. Rep. 107, 78th Cong., 1st sess., p. 21; S. Rep. 62, 78th Cong., 1st sess., p. 14.]

This purpose of the notice provision coincides with the purpose generally ascribed to similar state legislation. Thus, in the leading case of *Dickinson* v. *Mayor*, 92 N. Y. 584, 590, the New York Court of Appeals held:

> The intent and purpose of section 105 of the charter [requiring the giving of notice of claims and providing for a waiting period] was mainly to enable the comptroller to settle claims against the city and thereby *save unnecessary costs and expenses in the litigation which must ensue. We think it was not intended to indefinitely extend the time* in all cases within which an action might be brought against the city and thus put in the power of the claimant to delay, without any limitation whatever, * * *. The statute was for the benefit of the city and not for the benefit of the claimant. *It was not designed to repeal the statute of limitations as to the city* * * *. [Italics supplied.]

Such notice and waiting period statutes have been given the same interpretation in other jurisdic-

tions: *Dillon* v. *Board of Pension Commissioners*, 18 Cal. 2d 427; *Wilson* v. *Weber County*, 100 Utah 141 (overruled on another ground in *Shea* v. *State Tax Comm.*, 101 Utah 209); *Young* v. *City of Seattle*, 30 Wash. [2d] 357.[10]

3. The conflict between the Third and Ninth Circuits in this and *Thurston* cases is not of the type which calls for the supervisory intercession of this Court.[11] The present case was correctly decided below in full accord with the applicable precedents of this Court. The Second Circuit has already disagreed with it, *Gregory* v. *United States*, 187 F. 2d 101, and the district courts, too, have refused to be guided by it. *Sloand* v. *United States*, 93 *F. Supp.* 83 (W.D. N.Y.); *MacInnes* v. *United States*, 93 F. Supp. 987 (D.

[10] A related question is the problem of whether the two year statute of limitations of the Suits in Admiralty Act is to be extended by the period—not to exceed sixty days—during which a claim is pending for administrative determination. Some federal statutes (Act of May 29, 1928, 45 Stat. 964, 38 U.S.C. 445 par. 2 [claims for servicemen's life insurance], 28 U.S.C. 2401 (b) [Federal Tort Claims]) and state statutes (cf. *Brehm* v. *Mayor etc. of New York*, 104 N.Y. 186, *Dillon* v. *Board of Pension Commissioners*, *supra*, and *Young* v. *Seattle*, *supra*) expressly provide for such extension of the period of limitations. In the absence of such express provisions, however, the waiting period does not extend the statutory period by implication. The purpose of the two year statute of limitations is not to give the claimant 730 days in which to consider whether or not to bring the action but "that there may be, *at some definitely ascertainable period*, an end to litigation," *Reading Co.* v. *Koons*, 271 U. S. 58, 65 (emphasis supplied).

[11] The United States did not apply for a review of the *Thurston* case, because Thurston, aware of the uncertainties of that decision, offered to settle his $15,000 claim for about $600.

Mass.).[12] The problem no longer appears to be of great practical importance. The shipping industry returned to private operation a number of years ago; thus, it is unlikely that there will be much new litigation under the Clarification Act; and only a few cases involving the point are presently pending. Should a new emergency compel the Government again to take over the merchant marine, should the rights of merchant seamen under such conditions again be governed by the Clarification Act rather than by some new statute, and should the *Thurston* decision then be followed, this Court will have ample opportunity to exercise its supervisory powers. In these circumstances, there is no present need for a review of the decision below. Cf. *The Arlington* v. *Mayer*, 340 U.S. 965 (certiorari denied despite admitted conflict in interpretation of statute of temporary duration).

4. Finally, this case is not an appropriate one for review, since the decision below should be affirmed on the additional ground that petitioner never submitted an administrative claim as required by the Clarification Act, *infra*, pp. 18-20. The libel failed to allege that petitioner had submitted an administrative claim and that it had been rejected. These statements are of a jurisdictional nature. *Fox* v. *Alcoa S. S. Co.*, 143 F. 2d 667 (C.A. 5); *Rodinciuc* v. *United States*, 175 F. 2d 479 (C.A. 3), certiorari

[12] The decision of the District Court in the *Gregory* case (*supra*) was not based on the Clarification Act.

denied, 338 U. S. 895. When a motion was made to dismiss the complaint on this ground, petitioner did not amend the libel to include an allegation of the filing of the claim and its rejection. Nor did he submit a copy of the claim filed by him, although a copy should be available since the petitioner's correspondence apparently was conducted by his attorney (R. 15-16). Instead, he filed the copy of a letter (R. 14-16) received by his counsel from the ship's general agent. A careful reading of this letter discloses that it is far from supplying the missing allegations. On the contrary, it seems to explain why petitioner is so reluctant to allege straight-forwardly that he filed a claim for all the injuries set forth in the libel and why he did not submit a copy of the claim filed by him.

At best, the letter permits the inference that in connection with a request to withdraw desertion charges against petitioner,[13] some reference was made to petitioner's nurse condition and that the general agent preliminarily denied liability because the letter did not contain the data required by General Order 32, Section 304.24 (*infra*, p. 22) and thus did not constitute a claim within the meaning of the Clarification Act. *Rodinciuc* v. *United States*, 175 F. 2d 479 (C. A. 3). Obviously, no final rejection was intended since the letter promised further consideration upon receipt of

[13] The request was reluctantly granted because it was considered more important that the ship's captain leave port on a new voyage than remain in Philadelphia in order to press the charges against petitioner.

the additional information requested (R. 16). Moreover, it did not follow the rejection form set forth in General Order 32, Section 304.27 (*infra*, p. 24). But most important of all, it does not contain any reference to the shoulder and skin conditions alleged in the libel.

The inference is obvious: Petitioner never filed a claim for the latter two grievances, and his complaint about the injury to his nose was submitted in so vague a form that it did not even measure up to the liberal requirements of General Order 32, Section 304.24; hence, there was no exhaustion of the administrative remedy prescribed by the Clarification Act. (*Rodinciuc* v. *United States, supra*). It follows that the libel was subject to dismissal on this alternate ground.

CONCLUSION

The decision below is correct and the conflict with the Ninth Circuit's decision in *Thurston* v. *United States, supra*, does not justify the exercise of this Court's supervisory jurisdiction. It is respectfully submitted that the petition for a writ of certiorari should, therefore, be denied.

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APRIL 1951.

APPENDIX

1. The Clarification Act of March 24, 1943, 57 Stat. 45, 50 U.S.C. App. 1291 provides in pertinent part as follows:

> * * * (a) officers and members of crews (hereinafter referred to as "seamen") employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration shall, with respect to (1) laws administered by the Public Health Service and the Social Security Act, as amended by subsection (b) (2) and (3) of this section; (2) death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation, or claims arising therefrom not covered by the foregoing clause (1); and (3) collection of wages and bonuses and making of allotments, have all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on privately owned and operated American vessels. Such seamen, because of the temporary wartime character of their employment by the War Shipping Administration, shall not be considered as officers or employees of the United States for the purposes of the United States Employees Compensation Act, as amended; the Civil Service Retirement Act, as amended; the Act of Congress approved March 7, 1942 (Public Law 490, Seventy-seventh Congress); or the Act entitled "An Act to provide benefits for the injury, disability, death, or detention of employees of contractors with the United States and certain other persons or reimburse-

ment therefor", approved December 2, 1942 (Public Law 784, Seventy-seventh Congress). Claims arising under clause (1) hereof shall be enforced in the same manner as such claims would be enforced if the seaman were employed on a privately owned and operated American vessel. Any claim referred to in clause (2) or (3) hereof shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act. Any claim, right, or cause of action of or in respect of any such seaman accruing on or after October 1, 1941, and prior to the date of enactment of this section may be enforced, and upon the election of the seaman or his surviving dependent or beneficiary, or his legal representative to do so shall be governed, as if this section had been in effect when such claim, right, or cause of action accrued, such election to be made in accordance with rules and regulations prescribed by the Administrator, War Shipping Administration. Rights of any seaman under the Social Security Act, as amended by subsection (b) (2) and (3), and claims therefor shall be governed solely by the provisions of such Act, so amended. When used in this subsection the term "administratively disallowed" means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration. When used in this subsection the terms "War Shipping Ad-

ministration" and "Administrator, War Shipping Administration" shall be deemed to include the United States Maritime Commission with respect to the period beginning October 1, 1941, and ending February 11, 1942, and the term "seaman" shall be deemed to include any seaman employed as an employee of the United States through the War Shipping Administration on vessels made available to or sub-chartered to other agencies or departments of the United States.

2. Section 5 of the Suits in Admiralty Act, 41 Stat. 525, as amended by the Act of June 30, 1932, 47 Stat. 420, 46 U.S.C. 745, provides in pertinent part as follows:

> suits as herein authorized may be brought only on causes of action arising since April 6, 1917: *Provided,* That suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; all other suits hereunder shall be brought within two years after the cause of action arises * * *

3. General Order 32 of the War Shipping Administration, issued April 22, 1943 (8 F.R. 5414, 46 CFR § 304.20-304.29) provides in pertinent part as follows:

> § 304.20. *Statutory provisions.* Officers and members of crews (hereinafter referred to as "seamen") employed on United States or foreign flag vessels owned by or under bareboat charter to the War Shipping Administration and operated by an Agent under a Gen-

eral Agency form of Service Agreement, with respect to the claims hereinafter specifically enumerated, are given all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on American flag vessels privately owned and operated. Under such act, court action (a) may not be instituted to enforce such a claim until it shall have been administratively disallowed, in whole or in part, and (b) must be brought pursuant to the Suits in Admiralty Act.

304.21. *Claims which must be submitted for allowance prior to suit.* Claims, unless covered by the Social Security Act or laws administered by the Public Health Service, must be submitted for allowance prior to instituting court action thereon in cases of death, injury, illness, maintenance and cure, loss of effects, detention, repatriation, or claims arising therefrom; in cases relating to the collection of wages and bonuses and the making of allotments, when made against the United States of America, the War Shipping Administration, the Administrator thereof, or any other person for whom the United States of America or War Shipping Administration is responsible; in cases arising under the War Shipping Administration Crew Life and Injury Policy, the Second Seamen's War Risk Policy, and those arising under other Decisions of the Maritime War Emergency Board, in so far as such claims are made against the War Shipping Administration, provided they are made by or on behalf of seamen who, at the time

such claims arose, were employees of the United States through the War Shipping Administration, or by on behalf of their surviving dependents or beneficiaries or legal representatives.

§ 304.22. *Time of accrual.* Sections 304.20 to 304.29 apply to any claim specified in § 304.21 which:

(a) Arose on or after March 24, 1943; or

(b) Accrued on or after October 1, 1941, and prior to March 24, 1943, if the seaman or his surviving dependent or beneficiary or legal representative elects, as provided by §§ 304.28 and 304.29, to enforce such claim in the same manner as it would be enforced if it arose after the date of the enactment of Public Law 17—78th Congress (57 Stat. 45).

§ 304.23 *Court action; condition precedent.* No seaman or his surviving dependent or beneficiary or legal representative, having a claim under the provisions of §§ 304.21 and 304.22, shall commence a court action for the enforcement of such claim, unless such claim has been filed by him or on his behalf or by or on behalf of his surviving dependent or beneficiary or legal representative as provided in §§ 304.24 and 304.25 and has been administratively disallowed by the person or agency with whom it was so filed.

§ 304.24. *Claim, contents.* The claim need not follow any particular form, but it shall be in writing. It shall contain such particulars as are reasonably necessary as a basis for the allowance or administrative disallowance of such claim and should include, with respect to

the seaman in question, his home address, date of birth, place of birth, certificate of identification number, as well as all the facts and circumstances leading up to and surrounding the happening of the event out of which it is alleged the claim arose.

§ 304.25. *Claims, with whom filed.* Claims based upon any decision of the Maritime War Emergency Board or any insurance policy issued by the War Shipping Administration, excluding claims for loss of or damage to personal effects (if the insured is alive), bonus, and detention and repatriation benefits, shall be filed with the Chief Adjuster, Division of Wartime Insurance, War Shipping Administration, 99 John Street, New York City, or such other agencies or persons as may be designated by the Chief Adjuster for the purpose of determining the allowance or disallowance of such claim. All other claims, including claims for loss of or damage to personal effects (if the insured is alive), bonus, and detention and repatriation benefits, shall be filed with the General Agent of the vessel with respect to which such claims arose, or such Agent's Berth sub-agent to which the former may refer the claim for handling.

§ 304.26. *Claim, when presumed administratively disallowed.* If the person or agency with whom the claim is filed, in accordance with the directions contained herein, fails to notify the claimant in writing of a determination upon such claim, within sixty days following the date of filing thereof, the claim shall be presumed to have been administratively disal-

lowed, and the claimant shall be entitled to enforce his claim by court action.

§ 304.27. *Administrative disallowance, notice of.* In those cases in which the person or agency to whom the claim has been referred, determines that it shall be administratively disallowed, in whole or in part, such person or agency shall mail to the last known address of the claimant, or deliver or cause to be delivered personally to the latter or his agent, a letter in substantially the following form:

Dear Sir:

Reference: (Name of claimant—Name of vessel)

This is to certify that —(Claimant)—filed a written claim with the undersigned on—(Date received)—; that the claim involved or arose out of.

(here insert facts sufficient to identify the claim);

that such claim has been administratively disallowed, in accordance with the rules and regulations prescribed by the Administrator under the provisions of section 1(a) of Public Law 17—78th Congress (H.R. 133).

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